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September 13, 1993

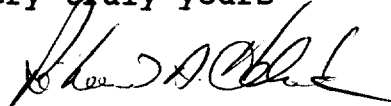
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: GC Docket No. 92-52

Dear Mr. Caton

Submitted herewith on behalf of Marc C. Scott Communications, Inc., licensee of FM Broadcast Station WFNN, Villas, New Jersey, are an original and four copies of its comments with respect to the above-referenced proceeding.

Very truly yours



Richard A. Helmick

Enclosure

cc: The Office of General
Counsel, FCC

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

In the Matter of

Reexamination of the Policy
Statement on Comparative
Broadcast Hearings)
)
)
)
)GC Docket No. 92-52 /

To: The Commission

COMMENTS OF MARC C. SCOTT COMMUNICATIONS, INC.

Marc C. Scott Communications, Inc. ("Scott"), licensee of FM Broadcast Station WFNN, Villas, New Jersey, through its counsel and pursuant to Section 1.415 of the Commission's Rules, hereby submits its comments with respect to the above-referenced proceeding. In support thereof, the following is set forth.

1. The Commission proposes to amend Section 73.3597(a)(1) of its rules to increase the holding period from one to three years for all successful applicants in comparative proceedings and to make the three year holding requirement applicable to all existing and future construction permit authorizations. Essentially, then, the Commission seeks to impose holding period requirements which were in effect prior to 1982 when the Commission found that the three year holding rule no longer served the public interest and repealed it (a one year holding requirement was imposed, however, with respect to construction permits awarded pursuant to a comparative proceeding). Transfer of Broadcast Facilities, 52 RR2d 1081 (1982), recon. granted in part, 99 FCC2d 971 (1985).

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2. Scott wishes to address only the applicability aspect of the proposed lengthening of the holding period. The Commission proposes to apply the three year holding requirement to all existing and future broadcast authorizations solely on the basis that "immediate application of a longer service continuity requirement would maximize its effectiveness." Further Notice of Proposed Rule Making (FCC 93-363), GC Docket No. 92-52, released August 12, 1993, at para. 16. Immediate application of the proposed three year holding requirement to existing authorizations would be retroactive in nature and would have an adverse effect on both licensees and third parties which had relied in good faith upon the current retention requirements of the Commission. A rule with retroactive consequences must be reasonable, especially when such consequences would cause serious economic harm to parties which have acted in reliance on the original rule. National Association of Independent Television Producers and Distributors v. FCC, 502 F2d 249 255 (Second Cir. 1974).

3. Scott, in reliance on the current retention provisions of Section 73.3597(a)(1) of the Commission's Rules, in March 1993 entered into a time brokerage agreement with WGMS, Inc., the permittee of FM Broadcast Station WJNN, North Cape May, New Jersey, to provide programming to that station. Moreover, the time brokerage agreement gives Scott an option to acquire Station WJNN after the station has been in operation for a period of one full year; but for this option to acquire Station WJNN, Scott would have

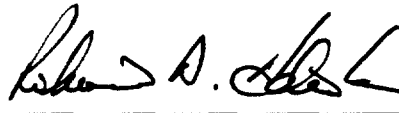
had little or no incentive to invest in programming for that station and it was a key consideration for Scott in negotiating the time brokerage agreement. As the construction permit for Station WJNN was issued pursuant to an Initial Decision in a comparative hearing on the merits, a one year holding period under the current rules is applicable to the station's permittee; since Station WJNN commenced program operations on May 19, 1993, Scott could exercise its option to acquire the station on May 19, 1994 and during a 20 day period thereafter. Should the Commission modify its retention requirements as proposed in this proceeding, Scott's option to purchase the station would not only be nullified, since it must be exercised within 30 days of the one year anniversary date when program operations were commenced, but the very essence of the bargained for time brokerage agreement will have been fundamentally changed.

4. As a general proposition, retroactive rules are valid if they are reasonable but invalid if the retroactivity is unreasonable under the circumstances. An agency abuses its discretion to make a ruling retroactive when the retroactive regulation alters settled prior law or policy upon which the public has justifiably relied and if the change causes inordinate harm. See W. T. Farms, Inc. v. Commissioner, 755 F2d 790, 802 (11 Cir. 1985) cert. denied 477 US 903 (1986). When the Commission changed its retention requirements in 1982 it found those retention requirements no longer in the public interest. Should the

Commission revise its retention requirements as proposed, the retroactive impact of such rule change would adversely affect third parties such as Scott, who have relied in good faith on the Commission's current rules; such a result would be unreasonable under the circumstances and an abuse of the Commission's discretion. Accordingly, for the reasons set forth above, any change in the Commission's retention requirements should be prospective, and not retroactive, in application.

Respectfully submitted

MARC C. SCOTT COMMUNICATIONS, INC.

By 
Robert B. Jacobi
Richard A. Helmick

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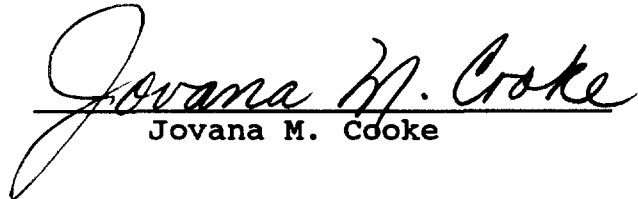
Its Attorneys

September 13, 1993

CERTIFICATE OF SERVICE

I, Jovana M. Cooke, a secretary in the law firm of Cohn and Marks, hereby certify that I have, this 13th day of September, 1993, caused to be hand delivered a copy of the foregoing **COMMENTS OF MARC C. SCOTT COMMUNICATIONS, INC.** to the following:

The Office of General Counsel
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554


Jovana M. Cooke